

EXHIBIT D

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 21, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN DAM et al.,
Appellants,
v.
MARK D. WALDRON, as Chapter 7
Trustee,
Appellee.

No. 2:20-CV-00391-SAB

**ORDER DENYING MOTIONS
AS MOOT**

Before the Court are Appellants' Motion for Stay Pending Appeal of Order (I) Approving the Sale of Moses Lake Equipment and Related Relief, (II) Approving Bid Procedures, ECF No. 4, and Appellee's Request for Judicial Notice in Support of Appellee's Objection to Motion for Stay Pending Appeal of Order (I) Approving the Sale of Moses Lake Equipment and Related Relief, (II) Approving Bid Procedures, ECF No. 12. The motions were heard without oral argument. For the reasons discussed below, the Court denies both motions as moot.

Background

The following facts are drawn from Appellants' Motion for Stay Pending Appeal, ECF No. 4, and Appellee's Objection, ECF No. 10. Debtor Giga Watt was a business that provided cryptocurrency miners access to facilities with extremely cheap power rates around Grant County and Douglas County. Giga Watt built infrastructure within their facilities that could host cryptocurrency mining

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ORDER DENYING MOTIONS AS MOOT # 1

1 machines—however, Appellants allege that Giga Watt did not actually own the
 2 mining machines. Instead, individual miners who wanted to use Giga Watt's
 3 facilities would (1) pre-purchase space in Giga Watt's facilities by buying WTT
 4 Tokens and then (2) either buy mining machines from other sellers and have the
 5 machines shipped to Giga Watt facilities or buy mining machines from Giga Watt,
 6 after which Giga Watt would waive the installation fee for equipment from other
 7 sources. But Appellants stress that Giga Watt's "main business model was always
 8 a hosting service" and "specifically advertised that it was not the owner of miners
 9 at its facility." ECF No. 4 at 4. Appellants instead claim that they, as the
 10 purchasers, were the rightful owner of the mining machines.

11 However, in 2018, the value of most cryptocurrencies crashed. Additionally,
 12 because Giga Watt's facilities were straining the local utilities, the Douglas County
 13 Public Utility District reneged on their power service agreement with Giga Watt
 14 and refused to let Giga Watt own or maintain a power substation near the Pangborn
 15 airport. Thus, Giga Watt filed for Chapter 11 bankruptcy on November 19, 2018 in
 16 the Eastern District of Washington.

17 On September 30, 2020, the Eastern District of Washington Bankruptcy
 18 Court converted the case to a Chapter 7 bankruptcy and appointed Mark D.
 19 Waldron as the Chapter 7 Trustee. On October 20, 2020, the Bankruptcy Court
 20 authorized Mr. Waldron to proceed with the sale of the equipment located at Giga
 21 Watt's Moses Lake facility. That same day, Mr. Waldron held an oral auction
 22 pursuant to the Sale Approval Order—the auction closed on October 22, 2020, and
 23 the equipment was sold to the winning bidder for \$112,000.

24 On October 22, 2020—the day the auction closed—Appellants filed a Notice
 25 of Appeal and a Motion for Stay Pending Appeal of Order (i) Approving the Sale
 26 of Moses Lake Equipment and Related Relief, (ii) Approving Bid Procedures in
 27 the Bankruptcy Court. But because Appellants had failed to note the motion for
 28 hearing in violation of the Local Bankruptcy Rules, the Bankruptcy Court issued a

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ORDER DENYING MOTIONS AS MOOT # 2

1 Notice Re: Failure to Note Motion for Stay Pending Appeal on October 26, 2020.
 2 Appellants then refiled their stay motion in Bankruptcy Court on October 30, 2020,
 3 which stated that any objections should be filed by November 22, 2020—but
 4 because November 22, 2020 was a Sunday, the deadline for filing was November
 5 23, 2020. Appellee then filed his objection to the stay motion on November 23,
 6 2020. But Appellants also filed a similar Motion for Stay in this Court on
 7 November 4, 2020, to which Appellee filed an objection on November 25, 2020.

8 The Bankruptcy Court held a hearing on Appellants' Motion for Stay
 9 Pending Appeal on December 10, 2020. BK Doc. 835. The Bankruptcy Court then
 10 issued an Order Denying Motion for Stay on the grounds that (1) the motion was
 11 moot because the sale of the Moses Lake equipment had already begun before
 12 Appellants filed their first Motion for Stay on October 22, 2020, and (2) even if the
 13 Motion was timely filed, Appellants could not show likelihood of success on the
 14 merits, irreparable injury, substantial injury to other interested parties, and lack of a
 15 public interest. BK Doc. 836.

16 **Appellants' Motion to Stay**

17 Appellants request that the Court grant a stay pending appeal of the
 18 Bankruptcy Court's Order (i) Approving the Sale of Moses Lake Equipment and
 19 Related Relief, (ii) Approving Bid Procedures because (1) the mining machines
 20 sold in that sale belonged to Appellants, not the Giga Watt bankruptcy estate, (2)
 21 the Appellants are not investors or equity holders of Giga Watt, (3) the mining
 22 machines are not in a bona fide dispute under 11 U.S.C. § 363(f)(4), and (4)
 23 Appellants cannot be compelled to accept a monetary satisfaction under 11 U.S.C.
 24 § 363(f)(5) and have not received adequate protection under 11 U.S.C. §§ 363(e),
 25 (p)(1). ECF No. 4 at 1-15. Appellants also argue that the Court's failure to grant a
 26 stay would cause immediate and irreparable harm, that the equities favor granting a
 27 motion for stay, and that no bond should be required for the stay. *Id.* at 16-17.
 28 Appellee in response argues that (1) Appellants' motion is moot because the sale of

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1 the equipment has already been closed, (2) Appellants are improperly trying to
 2 bypass the Bankruptcy Court by filing duplicative motions to stay in both
 3 bankruptcy court and district court, and (3) Appellants are barred from bringing
 4 this motion because they are illegally practicing law without a law license. ECF
 5 No. 10. In reply, Appellants further argue that the mining machines belonged to
 6 Appellants, rather than to Giga Watt. ECF No. 14.

7 Legal Standard

8 28 U.S.C. § 158(c)(2) allows a party to appeal a bankruptcy court order to a
 9 district court. A party can also file a motion for a stay of a bankruptcy court order
 10 while this appeal is pending. Fed. R. Bankr. P. 8007(a)(1)(A). Ordinarily, a party
 11 must first move for a stay of a bankruptcy court order in bankruptcy court, but the
 12 Federal Rules of Bankruptcy Procedure also allow a party to move for a stay in the
 13 district court where the party's appeal is pending. Fed. R. Bankr. P. 8007(b)(1). If
 14 the party moves for a stay of the bankruptcy order in district court, the party in
 15 their motion must show either that (1) moving first in the bankruptcy court would
 16 be impracticable or (2) if a motion was made in bankruptcy court, either state that
 17 the court has not yet ruled on the motion or state that the court has ruled and set out
 18 any reasons given for the ruling. Fed. R. Bankr. P. 8007(b)(2).

19 A district court has considerable discretion when determining whether to
 20 issue a stay pending appeal. *In re GGW Brands, LLC*, 2013 WL 6906375, at *10
 21 (Bankr. C.D. Cal Nov. 15, 2013) (citing to *Nken v. Holder*, 556 U.S. 418, 433-34
 22 (2009)). The Court must consider four factors when determining whether to issue a
 23 stay pending appeal: (1) whether the stay applicant has made a strong showing of
 24 likelihood of success on the merits, (2) whether the stay applicant will be
 25 irreparably harmed, (3) whether the stay will substantially injure other parties
 26 interested in the proceeding and (4) whether the stay would be in the public
 27 interest. *Hilton v. Braunschweig*, 481 U.S. 770, 776 (1987).

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If a bankruptcy court orders the sale of property other than cash collateral, the order is ordinarily stayed until 14 days after the entry of the order—however, the court can order otherwise and waive the 14-day stay. Fed. R. Bankr. P. 6004. If the court waives the automatic 14-day stay and the sale of the property authorized by the order closes before a party can move for a stay, any subsequently filed motion to stay is moot. *See In re Akhlaghpour*, No. 1:17-BK-12739-VK, 2018 WL 3357367, at *2 (Bankr. C.D. Cal. July 9, 2018). Similarly, an appellant’s failure to obtain a stay of an order approving a sale moots the appeal. *In re Onouli-Kona Land Co.*, 846 F.2d 1170, 1171 (9th Cir. 1988).

Discussion

The Court denies Appellants’ Motion to Stay as moot because the property for which Appellants seek a stay—the Moses Lake equipment—was already sold on October 22, 2020. Additionally, the Bankruptcy Court already heard Appellants’ Motion to Stay on December 10, 2020 and denied it as untimely and moot or, alternatively, denied it because Appellants’ motion could not satisfy the *Hilton* factors for granting a stay. Thus, the Court dismisses Appellants’ Motion to Stay as moot.

Appellee’s Request for Judicial Notice

Appellee requests that the Court take judicial notice of eleven different court filings from the Bankruptcy Court:

- (1) Proof of Claim No. 52-1, filed by Jun Dam on February 14, 2018;
- (2) Order Converting Case to Chapter 7, filed September 30, 2020 [BK Doc. 744];
- (3) Appointment of Trustee, filed September 30, 2020 [BK Doc. 745];
- (4) Findings of Fact and Conclusions of Law in Support of Order Authorizing Trustee’s Sale of Moses Lake Equipment, filed October 20, 2020 [BK Doc. 764];
- (5) Order (i) Approving the Sale of Moses Lake Equipment and Related Relief, (ii) Approving Bid Procedures, and (iii) Shortening Time to Object, filed October 20, 2020 [BK Doc. 765];

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- 1 (6) Motion for Stay Pending Appeal of Order (i) Approving the Sale of
- 2 Moses Lake Equipment and Related Relief, (ii) Approving Bid
- 3 Procedures, filed October 22, 2020 [BK Doc. 769];
- 4 (7) Notice of Appeal, filed October 22, 2020 [ECF No. 1; BK Doc. 770];
- 5 (8) Chapter 7 Trustee's Report of Sale of Moses Lake Inventory /
- 6 Equipment, filed October 23, 2020 [BK Doc. 776];
- 7 (9) Notice Re: Failure to Note Motion for Stay Pending Appeal, filed
- 8 October 30, 2020 [BK Doc. 781];
- 9 (10) Notice of Motion for Stay Pending Appeal of Order (i) Approving the
- 10 Sale of Moses Lake Equipment and Related Relief, (ii) Approving Bid
- 11 Procedures, filed October 30, 2020 [BK Doc. 794];
- 12 (11) Objection of the Chapter 7 Trustee to Motion for Stay Pending Appeal
- 13 of Order (i) Approving the Sale of Moses Lake Equipment and Related
- 14 Relief, (ii) Approving Bid Procedures, filed November 23, 2020 [BK
- 15 Doc. 812].

12 ECF No. 12 at 1-2.

13 The Court denies Appellee's Request for Judicial Notice as moot. The Court
14 will review all material and pleadings necessary from the bankruptcy court to make
15 any required decisions.

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ORDER DENYING MOTIONS AS MOOT # 6

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Appellants' Motion for Stay Pending Appeal of Order (I) Approving the
3 Sale of Moses Lake Equipment and Related Relief, (II) Approving Bid Procedures,
4 ECF No. 4, is **DENIED as moot**.

5 2. Appellee's Request for Judicial Notice in Support of Appellee's
6 Objection to Motion for Stay Pending Appeal of Order (I) Approving the Sale of
7 Moses Lake Equipment and Related Relief, (II) Approving Bid Procedures, ECF
8 No. 12, is **DENIED as moot**.

9 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
10 file this Order and provide copies to *pro se* Appellant and counsel.

11 **DATED** this 21st day of January 2021.



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15 Stanley A. Bastian

16 Stanley A. Bastian
17 United States District Judge
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ORDER DENYING MOTIONS AS MOOT # 7